

Kamla Devi Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-07-2009

Reported in : 2009(4)AWC4125

Judge : Arun Tandon, J.

Appellant : Kamla Devi

Respondent : State of U.P. and ors.

Advocate for Def. : Sri. C. B. Yadav

Advocate for Pet/Ap. : Sri. S. C. Kushwaha

Disposition : Petition dismissed

Judgement :

Arun Tandon, J.

1. Heard Sri S. C. Kushwaha, learned Counsel for the petitioner, Sri C. B. Yadav, learned Counsel for respondent No. 5 and learned standing counsel for respondent Nos. 1 to 4.

2. This writ petition has been filed by Kamla Devi, who was elected as the Pradhan of the Gram Panchayat Chakmeer Fajal Ali, Tehsil Karchhana, district Allahabad against the order of the Election Tribunal/Sub-Divisional Magistrate, Allahabad

dated 15.10.2008 passed in Election Petition No. 3 of 2005-08.

3. The facts giving rise to the V present writ petition are as follows:

Elections for the office of Pradhan of the Gram Panchayat referred to above took place in the year 2005. The writ petitioner was declared elected on the strength of the highest number of valid vote polled in her favour. The contesting respondent namely Anusuiya filed an election petition under Section 12C of the Panchayat Raj Act against the said election of the petitioner Kamla Devi, which was registered as Election Petition No. 3/2005-08. Alongwith the election petition election petitioner also made an application for recount of the votes. The application was allowed by the Election Tribunal vide order dated 15.10.2008.

4. Not being satisfied with the order so passed petitioner Kamla Devi filed Revision No. 323 of 2008 before the District and Sessions Judge, Allahabad. During the pendency of the said revision Kamla Devi filed Writ Petition No. 58982 of 2008, Kamla Devi v. State of U.P. and Ors. before this Court. The writ petition was dismissed by the Court vide order dated 14.11.2008 on the ground that the revision was still pending. The revisional court vide order dated 18.11.2008 dismissed the revision on the ground that against the interlocutory order, directing recount of vote, no revision is legally maintainable. This led to the filing of the present writ petition.

5. Petitioner prayed for quashing of the order of the revisional court dated 18.11.2008 and also for setting aside the order of the Election Tribunal dated 15.10.2008, whereby recount of valid vote was directed.

6. Counsel for the petitioner at the very outset stated that in view of the judgment of this Court in the case of Mohd. Mustafa v. Up-Ztia Adhikari, Phoolpur, Azamgarh and Ors. 2008 (2) UPLBEC 1701 : 2007 (6) AWC 5536, the revision filed against the order of recount was legally not maintainable and therefore the order of the District Judge refusing to entertain the revision need not be interfered by this Court. He has confined his challenge to the order of recount dated 15.10.2008 with a further prayer that the respondents may be restrained from declaring the result of the recount and may further be restrained from removing the

petitioner from the office because of such recount.

7. The order of recount is being challenged before this Court on the ground that the Election Tribunal has failed to appreciate that only vague and general allegations seeking recount were made and that secrecy of the ballot papers is of utmost importance and until and unless a strong prima facie case was made out for directing recount of ballot papers, such an exercise is not to be undertaken. Counsel for the petitioner further submits that even if recount in the fact has taken place under an illegal order of recount passed by the Election Tribunal, the benefit of such recount need not be granted in favour of the election petitioner nor can it be the basis for deciding the election petition. He has placed reliance upon the judgment of this Court in *Virendra v. State of U.P. and Ors.* 2008 (105) RD 480; *Pratap Singh v. State of U.P. and Ors.* 2008 (105) RD 276 : 2008 (3) AWC 2974. Reference has also been made to the judgment of the Hon'ble Supreme Court in the case of *Girias Investment Private Limited and Anr. v. State of Karnataka and Ors.* (2008) 7 SCC 53, for challenging that mere allegations of mala fide are not enough to succeed, they have to be supported by specific pleadings and material evidence.

8. The contention so raised on behalf of the petitioner is opposed by Sri C. B. Yadav, counsel for the contesting respondent and it is stated that in the facts of the case the Election Tribunal, after examining the pleadings and evidence on record has come to a conclusion that recount of the vote is warranted and has rightly issued the order impugned, which calls for no interference in writ jurisdiction.

9. I have heard counsel for the parties and have gone through the records of the writ petition.

10. The competence of an Election Tribunal to direct recount of votes has been settled by the Hon'ble Supreme Court in series of judgments time and again. The leading cases are being *M. Chinnasamy v. K. C. Palanisamy and Ors.* : 2004 (6) SCC 341; *Baidev Singh v. Shinder Pal Singh and Anr.* : 2007 (1) SCC 341 and *Mahendra Pratap v. Krishna Pal and Ors.* : 2003 (1) SCC 390.

11. The Hon'ble Supreme Court has specifically provided that before recount of the votes can be directed by an Election Tribunal, following three issues have to be examined:

(1) There is a specific pleading in support of the prayer for recount of votes.

(2) Necessary evidence is brought before the Election Tribunal in support of the said pleading.

(3) Election Tribunal is satisfied that there is a strong prima facie case where recount should be directed.

12. The Hon'ble Supreme Court has further clarified that this prima facie satisfaction has to be something more than that required in case of grant of temporary injunction.

13. Under these principles laid down by the Hon'ble Supreme Court of India that this Court may examine the findings recorded by the Election Tribunal for the purposes of directing recount in the facts of the present case.

14. The specific case pleaded by the election petitioner for the purpose of seeking recount is that the election was contested by as many as 9 candidates. Total number of votes polled were 1,267 votes. After the counting of the votes it was found that the election petitioner received 317 votes, the elected candidate (writ petitioner) received 275 votes, and similarly the details of the votes received by other candidates was also furnished. However, the result after such counting of the votes was not declared and recount of votes was directed. In recount of votes a bundle of 66 votes was taken out from the votes recorded in favour of the election petitioner and were included in the votes polled in favour of other candidates. On recount it was announced that Kamla Devi has secured 331 votes, while the election petitioner had received only 251 votes and accordingly Kamla Devi was declared elected. It was stated that the aforesaid 66 votes were wrongly included in the votes of other candidates.

15. The aforesaid pleading was supported by the oral statement made in the election petition. After examining the evidence of the parties, the Election Tribunal

recorded its prima facie satisfaction under the order dated 15.10.2008 for directing recount, which reads as follows:

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16. After examining the aforesaid fact and the prima facie conclusion recorded by the Election Tribunal for directing recount, I am satisfied that the requirements as laid down by the Hon'ble Supreme Court in the cases referred to above stands fully satisfied and therefore the Election Tribunal was legally justified in directing recount of the votes. The order passed by the Election Tribunal does not warrant any interference under Article 226 of the Constitution of India.

17. The judgment relied upon by the counsel for the petitioner are clearly distinguishable, inasmuch as the Election Tribunal in the facts of the case has rightly come to a conclusion that the recount of the votes was warranted having

regard to the specific pleadings and the evidence led in support thereof by the election petitioner. For the reasons recorded above, the recount of votes is legally justified.

The writ petition lacks merit and is dismissed.

Interim order, if any, stands discharged.

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